No. 78-1789

In The

Supreme Court of the United States

OCTOBER TERM, 1980

ARKANSAS LOUISIANA GAS COMPANY,
Petitioner

v.

FRANK J. HALL, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF OF ATLANTIC RICHFIELD COMPANY AS AMICUS CURIAE

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Pursuant to Rule 36 of the Rules of this Court, Atlantic Richfield Company (Atlantic), *amicus curiae*, respectfully submits this Brief in support of the Respondents, Frank J. Hall, *et al.* The written consent of all parties to the filing of this Brief has been separately filed. Unless otherwise noted, all emphasis herein is added.

I.

INTEREST OF ATLANTIC AS AMICUS CURIAE

Atlantic is appellant in an action presently pending in the United States Court of Appeals for the Fifth Circuit, styled *Atlantic Richfield Company v. Northern Natural Gas Com-*

pany, No. 78-1112. Oral argument was held in *Atlantic Richfield* in November, 1979, and by letter dated December 5, 1979,* the Fifth Circuit advised the parties that it was withholding its opinion pending outcome of the petition for certiorari filed in the Supreme Court in the instant case.

Atlantic Richfield is an action by Atlantic against Northern for damages for breach of contract, brought in federal court under diversity jurisdiction. In 1955, Atlantic's and Northern's respective predecessors in interest entered into a natural gas purchase contract. One provision of the contract was a favored-nations clause. It unequivocally obligated Northern to pay Atlantic higher gas prices if Northern paid a higher gas price to another producer in the same field. In September, 1973, Northern paid another producer, Phillips Petroleum Company, a higher price for comparable gas in the same field and the favored-nations clause was triggered. Northern failed to notify Atlantic of such event and thereby deprived Atlantic (until April 1975) of the opportunity to file a change in rate with the Federal Power Commission** reflecting the higher price. Although acknowledging its contractual obligation to pay the higher prices contractually due from September 1973 to April 1975, Northern refused to pay Atlantic the increased prices called for during such period by the triggered price escalation clause, claiming that it could not pay because the Commission did not authorize Atlantic to receive such higher prices until April, 1975. Northern's failure to notify of the triggering event constituted a breach of contract, according to Atlantic, for which it duly sued. Damages in the amount of approximately $582,000 were sought, those damages being measured by the difference between the higher unit price Northern

*A copy of the letter is appended to Petitioner's Brief on the Merits herein at page 26a.

**Now Federal Energy Regulatory Commission (Commission).

paid to Phillips and the lesser unit price Northern paid to Atlantic for the period in issue.

On the basis of these facts, the trial court entered judgment dismissing Atlantic's complaint for lack of subject matter jurisdiction.* In so ordering, the court reasoned that despite the fact the action was for breach of contract, it appeared to it that Atlantic was seeking a higher rate for an interstate gas sale for which no Commission approval had been granted. The court maintained that Atlantic was seeking a retroactive increase in rates, judicially promulgated, something the courts are not allowed to do. Since only the Commission has jurisdiction to determine "just and reasonable" rates for the sale of gas, the court believed it had no subject matter jurisdiction and the complaint was dismissed. In so ruling, the court simultaneously stated that Atlantic had no remedy available from the Commission because that body could neither grant money damages for breach of contract nor award retroactive rate increases. In effect, the court held that the breach of contract must be considered *damnum absque injuria*. Atlantic appealed. As stated above, the Fifth Circuit has now deferred its decision pending the outcome of the instant action.

The central issue involved in *Atlantic Richfield* is the same as one of the issues involved in the instant case. Atlantic's argument in support of Respondents will focus on that issue, which is stated as follows:

> Does the filed rate doctrine immunize the stockholders of a regulated natural gas pipeline company from a common law action for damages resulting from breach

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*The court did so by way of a Memorandum Opinion and Order, a copy of which is appended to Petitioner's Brief on the Merits herein at pages 19a-24a.

by such company of a contractual obligation to notify a regulated gas supplier of an event which triggered that supplier's right to file for a rate increase under the Natural Gas Act?

II.

SUMMARY OF ATLANTIC'S ARGUMENT

The answer to the above question is no. The Natural Gas Act and the filed rate doctrine are intended to protect natural gas *consumers* from unreasonable and excessive rates — not the *shareholders* of an interstate gas transmission company from breach of contract damages.

A contrary holding will condone and encourage the breach of binding contract obligations by the management of regulated natural gas pipeline companies by withholding from their gas suppliers essential facts peculiarly within the knowledge of the management of the pipeline companies.

Accordingly, the Louisiana Supreme Court was correct in awarding the Respondents monetary damages for Arkla's breach of contract during the 1961-1972 damage period.

III.

ARGUMENT

A. The Filed Rate Doctrine Is Not Applicable

Central to Arkla's case is its contention that the filed rate doctrine was violated by the Louisiana Supreme Court when it awarded damages measured by the difference between the rates on file during the 1961-1972 period and the contractual entitlement for that period. In this assertion, Arkla is strongly supported by both Northern and the Commission in their respective *amici* briefs. Atlantic submits that the

heavy reliance placed upon the filed rate doctrine by Arkla, Northern and the Commission is misplaced.

The filed rate doctrine states that a natural gas company cannot collect from the consumer rates for which it has not filed and received approval from the Commission. Atlantic does not question the legitimacy of the doctrine. Rather, the doctrine, properly considered, has no application to the instant case. For example, the doctrine does *not* state that a regulated natural gas supplier cannot sue for breach of contract and recover damages from a regulated gas pipeline. The doctrine does not insulate a pipeline company from liability if that company breaches a contractual duty to notify its supplier and thereby deprives the supplier of the opportunity to make a timely filing for a contractually-authorized rate increase, as is the proof in this case.

Having failed to comply with its clear, contractual duty to notify Respondents, which duty was activated by the triggered favored-nations clause, Arkla cannot invoke the filed rate doctrine and thus escape liability by claiming that Respondents' failure to timely file for a rate increase is fatal to any subsequent court proceeding, irrespective of Arkla's own breach of contract in bringing about the filing failure.

The filed rate doctrine may deny the Respondents a remedy under the Natural Gas Act, but the doctrine does not deny the Respondents a judicial remedy for Arkla's breach of contract. The filed rate doctrine only pertains to "changes in rates"* (which impact the protected consumer) and not to breaches of contract (which impact Arkla's stockholders). Money damages from Arkla's shareholders are sought, not retroactive rate increases which would be passed on to consumers.

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*See § 154.94(a) of the Commission's Regulations: No change shall be made in any rate "... without first filing a change in rates ...."

This Court's main pronouncements on the filed rate doctrine, in the natural gas field, were made in a decision rendered three years *before* it ruled that Commission jurisdiction attached to producer gas sales contracts.* That decision was *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246 (1951). *Montana-Dakota* has been cited by Arkla, Northern and the Commission as unquestionably dispositive of this appeal. We submit that these parties misread *Montana-Dakota* and seek to extend it far beyond its intended embrace.

In *Montana-Dakota*, the plaintiff electric utility company, unable to claim diversity to obtain a federal forum, asserted federal jurisdiction on the grounds of (a) federal question, (b) more particularly, under a "law regulating commerce" and (c) specifically the Federal Power Act (341 U.S. at 248) and identified "as the *source of its cause of action* the Federal Power Act's requirement of reasonable electric utility rates" (341 U.S. at 250). By way of contrast, in the instant case, Respondents sued in state court on traditional breach of contract grounds. They did not assert a cause of action based upon any liability created by the Natural Gas Act.

It is crucial to note that the majority in *Montana-Dakota*, on two separate occasions (341 U.S. at 250 and 252) recognized that had the plaintiff brought its claim as a common law action** in a court of competent jurisdiction, such an action would have been maintainable and the filed rate

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*In 1954, in the case of *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, this Court held for the first time that the Federal Power Commission had jurisdiction over the prices charged by an independent producer of natural gas.

**The precise ground of the common law action (whether fraud and deceit as there, or breach of contract as here) would appear to be immaterial to the Court's conclusion.

doctrine would have posed no problem. However, *because the plaintiff elected to proceed under the Federal Power Act* (identical, in material respects, to the Natural Gas Act) in order to obtain federal court jurisdiction, it found itself subject to the limitations on the Commission's remedy powers under that Act. Mr. Justice Jackson, speaking for the majority, stated:

> "If the petitioner's grievance arises from active fraud and deceit, it gains nothing from the Federal Act. Such an action would have been maintainable if no Federal Power Act had been enacted. Before the Act, petitioner would have had no statutory right to a reasonable rate, but it did have a common-law right not to be defrauded into paying an excessive or unreasonable one." (341 U.S. at 252).

Thus, under the logic of *Montana-Dakota*, Respondents herein were properly awarded damages because their complaint was not founded upon the Natural Gas Act but rather on common law breach of contract and the relief sought (i.e., damages) will in no wise affect rates to be paid by the protected consumer. In short, Respondents, in *Montana-Dakota* language, by charting their course of passage through the state courts, avoided both Scylla and Charybdis.*

Northern ends its *amicus* brief with the following sentence from *Montana-Dakota*:

> "It is urged that this leaves petitioner without a remedy under the Power Act. We agree."

Apparently, Northern would have this Court believe that since petitioner was left without a remedy under the Power

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*In *Montana-Dakota*, the petitioner's problem was "to avoid Scylla without being drawn into Charybdis." (341 U.S. at 250). In the context of that decision, Scylla was the rock of no federal forum because no diversity existed and Charybdis was the whirlpool of Federal Power Act limitations on retroactive rate-making. Petitioner therein drowned in Charybdis.

Act in *Montana-Dakota*, that Respondents should be left without a remedy under the common law in the instant case. Such reasoning does not follow. Obviously, within the sentence quoted above, there is a self-contained limitation, i.e., the "no remedy" holding is specifically linked to the Power Act. As a matter of fact, we agree that in the instant case, Respondents may be left without a remedy under the Natural Gas Act. However, Respondents did not sue under the Natural Gas Act and they did not link their requested remedy to the Natural Gas Act. A court award of damages is, we respectfully submit, entirely permitted by and consistent with the majority decision in *Montana-Dakota*.

In sum, if a gas supplier, through the breach of a contractual obligation by its natural gas purchaser, is deprived by such breach of the opportunity to seek Commission approval to receive increased prices not in excess of then existing Commission ceiling prices, the supplier loses a valuable right. Under such circumstances, it is not necessary to determine whether the Commission would have granted the increased prices if they had been filed for in order to establish that the gas supplier was injured by deprivation of the opportunity to file. The *amount* of the damage award might vary, depending on the evidence, *but the power* of the court to award damages to compensate for such injury is indisputable.

B. The True Public Policy Involved Herein

There is public policy underlying the Natural Gas Act, but it is submitted that Arkla, Northern and the Commission have left the erroneous impression that the public interest protected thereby would be adversely affected by an award of damages to Respondents. The policy behind the Natural Gas Act (and its corollaries, such as the filed rate doctrine) is the protection of natural gas *consumers* from

unreasonable or excessive rates.* But this policy was never intended to protect the *shareholders* of interstate gas transmission companies like Arkla from money damages for breach of contract. We emphasize shareholders because Arkla's private investors are the real defendants in interest in this case. If Arkla has to respond to Hall, *et al.* in money damages, the damages should come from the pockets of Arkla's shareholders, not from the consuming public.

The argument advanced by Arkla, Northern and the Commission for the application of the filed rate doctrine is predicated upon the unspoken but implicit assumption that any damages paid to Respondents would constitute an element of Arkla's jurisdictional cost of service rate base and thus ultimately be a burden upon (because paid by) Arkla's jurisdictional gas customers, in seeming contravention of the public policy behind the Natural Gas Act. It cannot be asserted, however, that an award of damages in this case will *ipso facto* be reflected in consumer rates. Indeed, the Commission's brief (typed text, page 13) recognizes that any attempt by Arkla to pass through a damage award to its consumers by way of "surcharges" would have to be authorized by Commission action in a separate proceeding. Thus, requiring Arkla to respond in damages for breach of contract in no way deprives the Commission of its power and responsibility to protect consumers from unreasonable or excessive rates.**

**See e.g., N.A.A.C.P. v. Federal Power Commissioh,* 425 U.S. 662 (1976) at 669-670 and cases cited therein at footnote 5.

***Socony Mobil Oil Co. v. Brooklyn Union Gas Co.,* 299 F.2d 692 (5th Cir.), *cert. den.* 371 U.S. 887 (1962), prominently cited by Arkla, is inapposite. There the overcharges in issue had been passed on to the gas consumer and the refunds required by the court's decision would also be passed on to the consumer.

Arkla would have this court *equate* the admitted public interest in protecting gas consumers from uncertain or excessive rates *to* protecting the company's private shareholders from paying damages for breach of contract. We have been unable to find any case stating that one of the public policies undergirding the Natural Gas Act is protection of a regulated gas company's shareholders from responding in damages for contract breaches by their company, particularly where, as here, the rates paid by the consuming public should not be affected. Rather, the law is to the contrary. There is a widely recognized and strong public policy in favor of the sanctity of contracts, including jurisdictional gas sales contracts. As this Court itself has stated, in *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 322 at 338 (1956), the Natural Gas Act does not abrogate private gas purchase contracts.

Moreover, damages for breach of a jurisdictional gas sales contract, where "just and reasonable rates" were an important component of the damage calculation, have been judicially awarded and approved. *Western Natural Gas Co. v. Cities Service Gas Co.*, 507 P.2d 1236 (Okla. 1972), appeal dismissed and *cert. den.*, 409 U.S. 1052 (1972) and *Cities Service Gas Co. v. Federal Power Commission*, 525 F.2d 1278 (D.C. Cir. 1976).

Therefore, the protestations of concern for the public interest, voiced by Arkla, Northern and the Commission in their briefs, are not warranted here. Properly viewed, the public interest at stake here is that of the sanctity of contracts and not allowing parties to jurisdictional gas sales contracts to escape responsibility for breaches by seeking refuge under the ill-fitting cloak of the filed rate doctrine. The public interest asserted by Arkla, Northern and the Commission, i.e., protection of consumers against uncertain or excessive rates, is simply not involved in this case.

In sum, the award of damages to Respondents herein should not increase the consumer's monthly gas bill and the payment of damages should have no effect on Arkla's or Respondents' rate bases. We urge this Court to clearly apprise the management of regulated gas transmission companies that the protection of consumers by the Natural Gas Act does *not* extend to protecting shareholders for breach of contract. A contrary holding would constitute an open invitation to regulated natural gas pipeline companies to withhold from their gas suppliers essential facts peculiarly within the knowledge of the gas pipeline and thereby breach with impunity otherwise binding contract obligations.

In their briefs, Arkla, Northern and the Commission frequently allude to the "public policy" or "public interest" underlying the Natural Gas Act and assert that such policy prevents Respondents from recovering money damages for Arkla's breach of contract. For example, at page 17 of its *amicus* brief, Northern apparently maintains that it can breach with impunity jurisdictional gas sales contracts. It claims that the Natural Gas Act established a public policy which precludes the Louisiana State Supreme Court from granting Respondents damages and that such "public policy cannot be avoided by private contract or Arkla's breach thereof." [Citing *Montana-Dakota, supra,* and three other cases, *Brooklyn Savings Bank v. O'Neil,* 324 U.S. 697 (1944); *Mid-State Horticultural Co., Inc. v. Pennsylvania R. R. Co.,* 320 U.S. 356 (1943); and *Scott Paper Co. v. Marcalus Manufacturing Co., Inc.,* 326 U.S. 249 (1945)]. Not one of the three last cited cases involves the Natural Gas Act and certainly none of the cases suggests that a regulated natural gas company (such as Arkla) is not answerable in court for its breach of contract.

The *Brooklyn Savings Bank* case involved a public policy embodied in the *Fair Labor Standards Act*, which prevented

an employee from waiving his right to liquidated damages. In ruling that an employer cannot defeat the protective purpose of the Act by a release based on unequal bargaining power between employer and employee, this Court specifically declared that:

> ". . . the legislative policy behind *this* enactment and issues arising under *other acts* having different legislative backgrounds are *not conclusive* in determining the legislative intent with respect to the Fair Labor Standards Act." (324 U.S. at 713).

The *Mid-State Horticultural* case involved a public policy under the *Interstate Commerce Act* which absolutely barred actions by carriers for recovery of charges unless commenced within three years from the time the cause of action accrued. Surely, such a public policy appearing in an Interstate Commerce Act case does not purport to immunize owners of a regulated natural gas company (Arkla) from damages for violating contract rights. More importantly, this Court in another case, *United Gas Pipeline Co. v. Mobile Gas Service Corp., supra,* has previously highlighted the sharp and basic difference between the Interstate Commerce Act and the Natural Gas Act:

> "In construing the [Natural Gas] Act, we should bear in mind that it evinces no purpose to abrogate private rate contracts as such. To the contrary, by requiring contracts to be filed with the Commission, the Act expressly recognizes that rates to particular customers may be set by individual contracts. In this respect, the Act is in *marked contrast* to the Interstate Commerce Act, which in effect *precludes private rate agreements* by its requirement that the rates to all shippers be uniform, a requirement which made unnecessary any provision for filing contracts." (350 U.S. at 338).*

*This citation also serves to negate the Commission's heavy reliance in its brief herein on numerous Interstate Commerce Act cases, particularly *T.I.M.E., Inc. v. United States,* 359 U.S. 464 (1959).

Northern's third case cited for its public interest assertion, *Scott Paper Company*, involved public policy under the federal *patent* laws. There this Court ruled that the doctrine of estoppel could not be used to penalize or stop the use of an expired patent because, under the public policy of the patent laws, the public had previously paid for the invention (the expired patent) by the prior grant of a limited monopoly. Once expired, the patent became public domain and no one could change this result by private contract or estoppel. Again, it appears clear that the public policy involved in such a patent case does not extend to insulating investors in a regulated natural gas company from liability for breach of contract.

C. Pan American Petroleum v. Superior Court Is Applicable

The facts of the instant case have been stated in detail by others. In short, the Respondents filed suit in Louisiana state court for breach of a contract containing a favored nations clause. The claim was that, beginning in September 1961, Arkla breached its contract by failing and refusing to inform the Respondents of higher gas prices paid to the United States, which higher prices were said to trigger (to Respondents' benefit) the favored-nations clause.

It is submitted that the Louisiana Supreme Court was manifestly correct in upholding state court jurisdiction of such a case. The claim advanced was clearly one for traditional breach of contract and thus grounded on state law. The contract rights asserted by the Respondents in their Louisiana state court pleadings do not lose their character as such, simply because there exists a scheme of federal regulation of interstate transmission of natural gas.

This is the clear teaching of *Pan American Petroleum Corp. v. Superior Court,* 366 U.S. 656 (1961). In *Pan American Petroleum,* a natural gas pipeline company sued two natural gas producers in state court for overcharges paid under compulsion of a Kansas minimum price order, which required the pipeline company to pay the producers at rates higher than those stipulated in its contracts with the producers. Both the plaintiff pipeline company and the defendant producers were subject to the jurisdiction of the Natural Gas Act. The producers argued that the Act deprived the state court of jurisdiction over the subject matter of the case. Not so, ruled this Court in a unanimous opinion. Speaking through Mr. Justice Frankfurter, the Court quoted from the Supreme Court of Delaware, which had sustained its trial court's jurisdiction in these words:

> ". . . the claims of Cities Service [the pipeline company] 'are not founded upon any liability *created* by the Natural Gas Act, but upon a private contract deriving its force from state law.'" (366 U.S. at 661, emphasis in original).

Justice Frankfurter noted that "the party who brings a suit is master to decide what law he will rely upon" (366 U.S. at 662) and declared it significant that no right of relief was asserted by the pipeline company under the Natural Gas Act. Rather, relief was predicated on the basis of alleged contracts to refund overpayments or for restitution based on unjust enrichment. He concluded that such asserted rights were traditional, common-law claims which:

> ". . . do not lose their character because it is common knowledge that there exists a scheme of federal regulation of interstate transmission of natural gas." (366 U.S. at 663).

The Louisiana Supreme Court, therefore, properly ruled that the case at hand involved a traditional claim for dam-

ages arising from breach of a gas purchase contract, and that such damage claim was not founded upon any liability created by the Natural Gas Act. Rather, it was founded upon a private contract deriving its force and effect from state law.

D. "Damages" vs. "Rates"

Arkla argues that the "inefficacy" of bringing an action for "damages" (rather than seeking a "rate" remedy under the Natural Gas Act as in *Montana-Dakota)* has been established by "the courts."* However, of the two cases cited by Arkla for this proposition, one is the *Atlantic Richfield* case described above, in which an appeal is pending and as to which the trial court's opinion cannot reasonably be described as precedential at this stage of the proceedings.

The other case is equally non-dispositive. That case is *Interstate Natural Gas Co. v. Southern California Gas Co.*, 102 F.Supp. 685 (S. D. Ca. 1952), affirmed, 209 F.2d 380 (9th Cir., 1953). Interstate Natural Gas Company (Interstate) sued for damages on the basis of an alleged refusal by Southern California Gas and others to transport through its pipeline system natural gas belonging to Interstate. Interstate specifically pleaded violations of the Mineral Lands Leasing Act, the Sherman Antitrust Act and the Natural Gas Act.

The Ninth Circuit held that Interstate was required to first seek relief from the Federal Power Commission before bringing a lawsuit, under the principle of primary administrative jurisdiction. It was for the Commission to decide, in the first instance, questions traditionally within its administrative expertise, such as whether the public convenience and necessity required Southern California Gas to transport any of Interstate's gas and if so, how much and at what rates.

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*Petitioner's Brief on the Merits, page 20.

Additional questions as to what facilities or services should be abandoned to accommodate Interstate would also call for Commission resolution.

Obviously, the fact situation of *Interstate* is decidedly dissimilar to the instant case. Further, the case was not pleaded as a traditional breach of contract suit. Rather, and directly germane to the present appeal, *Natural Gas Act jurisdiction was specifically invoked.* Thus, the principles of law enunciated in *Interstate* simply bear no reasonable relationship to the case at hand and they certainly do not establish that natural gas producers (such as Respondents) cannot sue for damages for breach of contract by an interstate pipeline (such as Arkla).

Indeed, there is judicial precedent directly refuting Arkla's "inefficacy" argument. *See, e.g., Cities Service Gas Co. v. Federal Power Commission, supra.* There, the District of Columbia Court of Appeals, in a case involving breach of a jurisdictional gas sales contract, ruled the following on this very point:

> "In its March 18 order the FPC correctly distinguished between Cities' obligation under the [Natural Gas] Act to pay the just and reasonable rate for gas delivered to it (the issue before the Commission) and Cities' separate and independent obligation to respond in damages for private contractual breaches (the issue before the Oklahoma courts) . . . ." (535 F.2d at 1284).

E. Mississippi Power & Light Is Not Controlling

In its *amicus* brief, Northern gives expanded treatment to *Mississippi Power & Light Co. v. Memphis Natural Gas Co.*, 162 F.2d 388 (5th Cir.), *cert. den.*, 332 U.S. 770 (1947), which it claims is "closely analagous" to the present case. Northern's heavy reliance on *Mississippi Power & Light* is not well-founded.

Not only does *Mississippi Power & Light* predate by some seven years this Court's extension of Natural Gas Act jurisdiction over gas producing companies in *Phillips, supra,* but it also was issued some four years before this Court's pronouncements on the filed rate doctrine in *Montana-Dakota, supra.* More importantly, the case is distinguishable from the case at bar because the Fifth Circuit found no breach of contract.

Memphis Natural Gas Company sued to recover from Mississippi Power and Light Company a balance claimed to be due under rates filed with the Commission for gas sold by Memphis to Mississippi. Mississippi refused to pay Memphis' filed rate and filed a counterclaim on the theory that when the "reverse" favored-nations clause* involved in the case was activated by Memphis selling at a lower rate to another buyer, Memphis was required to file a new rate schedule (for Mississippi's benefit) with the Commission. The court rejected this contention, however, and refused to impose a contractual duty on Memphis to file for a lower rate for the benefit of Mississippi when there was no such filing obligation set forth in the contract. Thus, no breach of contract occurred.

IV.

CONCLUSION

Atlantic submits the Court should affirm the judgment of the Supreme Court of the State of Louisiana in its grant to Respondents of damages for the period 1961-1972 for Arkla's

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*The favored-nations clause was a "reverse" type because it provided that the benefit of a *lower* price paid by the seller (Memphis) to another was to flow to the *buyer* (Mississippi), whereas the ordinary favored-nations clause (and the one involved in the instant appeal) provides that the benefit of a *higher* price paid by buyer (Arkla) to another shall flow to the *seller* (Respondents).

contract breach. In so doing, the Court should clearly announce to regulated natural gas pipeline companies that the filed rate doctrine protects consumers and does not immunize stockholders from a common law action for damages resulting from breach by their company of a contractual obligation to notify a regulated gas supplier of events which trigger that supplier's right to file for a rate increase under the Natural Gas Act.

Respectfully submitted,

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